

OPEN MEETING ITEM

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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JUN 23 2011

DATE: JUNE 23, 2011
DOCKET NO.: RR-02635B-10-0305
TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern.
The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON NORTHERN SANTA FE RAILWAY
(AT-GRADE CROSSINGS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 5, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 28, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO MODIFY FOUR
11 EXISTING CROSSINGS OF THE BURLINGTON
12 NORTHERN SANTA FE RAILWAY AT 103RD,
13 107TH, 111TH AVENUES AND GREENWAY
14 ROAD, IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. RR-02635B-10-0305

DECISION NO. _____

OPINION AND ORDER

11 DATES OF PUBLIC HEARING: May 23, 2011

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. James R. Redpath, Assistant Attorney General, on
15 behalf of the Arizona Department of Transportation;

16
17 Mr. Patrick Black, Fennemore Craig, on behalf of
18 Burlington Northern Santa Fe Railway; and

19 Mr. Charles Hains and Ms. Robin Mitchell, Staff
20 Attorneys, Legal Division, on behalf of the Safety
21 Division of the Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 On July 22, 2010, the Arizona Department of Transportation ("ADOT") filed with the
23 Arizona Corporation Commission ("Commission") an application for approval for the modification
24 of four at-grade crossings of the Burlington Northern Santa Fe Railway ("Railroad") in Maricopa
25 County ("County"), Arizona. Three of the crossings are in the County and one is in the City of
26 Surprise ("City") as follows: 103rd Avenue at USDOT NO. 025 399 X; 107th Avenue at USDOT NO.
27 025 398 R; 111th Avenue at USDOT NO. 025 397 J; and Greenway Road at USDOT NO. 025 651 J
28 ("Application").

1 On August 11, 2010, by Procedural Order, the Application was scheduled for hearing on
2 November 16, 2010, and other procedural dates established.

3 On September 28, 2010, the Safety Division, Railroad Safety Section ("Staff") filed a request
4 for a Procedural Order to be issued. Staff indicated that ADOT and the Railroad were discussing
5 changes to the Application. Because the changes would affect the scope and character of the
6 Application, Staff indicated that the Application would have to be amended. Staff was unaware when
7 this filing would take place and was unable to determine when it would be able to file its Staff
8 Report. ADOT indicated further that public notice had not yet been provided pursuant to the
9 Commission's earlier Procedural Order of August 11, 2010.

10 On October 1, 2010, by Procedural Order, the hearing scheduled on November 16, 2010, and
11 other procedural dates were vacated. It was further ordered that upon the filing of an amended
12 Application by ADOT, a new Procedural Order would be issued to establish a new hearing date, a
13 date for public notification, and other related filing dates.

14 On February 28, 2011, ADOT filed its amended Application.

15 On March 22, 2011, by Procedural Order, a hearing was scheduled on May 26, 2011.
16 Subsequently, due to a scheduling conflict it became necessary to revise the date of hearing, but all
17 other procedural dates remained unchanged.

18 On March 30, 2011, by Procedural Order, the hearing was rescheduled to commence on May
19 23, 2011.

20 On May 11, 2011, ADOT filed certification that public notice had been provided in
21 accordance with the Commission's revised Procedural Order.

22 On May 23, 2011, a full public hearing was convened before a duly authorized Administrative
23 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and Staff
24 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement
25 pending submission of a recommended Opinion and Order to the Commission.

26 * * * * *

27 Having considered the entire record herein and being fully advised in the premises, the
28 Arizona Corporation Commission finds, concludes, and orders that:

FINDINGS OF FACT

1
2 1. On July 22, 2010, ADOT filed an Application in which it requested an Opinion and
3 Order from the Commission approving the modification of four at-grade public crossings of the
4 Railroad in the County. Three of the crossings which are to be modified are located in the County's
5 jurisdiction as the road authority and the fourth crossing is located in the City's jurisdiction as the
6 road authority as follows: 103rd Avenue, USDOT NO. 025 399 X; 107th Avenue, USDOT NO. 025
7 398 R; 111th Avenue, USDOT NO. 025 397 J; and Greenway Road, USDOT NO. 025 651 J.

8 2. On February 28, 2011, ADOT filed an amended Application.

9 3. ADOT is in the process of widening approximately 12 miles of U.S. 60 (aka
10 Grand Avenue) between 99th Avenue and State Route ("SR") 303 from four lanes to six lanes
11 by adding a lane in each direction. Due to the fact that the Railroad's tracks parallel U.S. 60
12 for the length of the road improvement project planned by ADOT, and the fact that the tracks
13 are approximately 100 feet from the roadway, all of the Railroad's existing automatic
14 warning devices must be either replaced or relocated to accommodate ADOT's construction
15 project. The Application provides for the old warning devices to be replaced by current state
16 of the art automatic warning devices.

17 4. According to the report filed by Staff, work will not commence on the
18 Railroad's warning devices until after the Commission approves the Application. However,
19 ADOT has been working on constructing the roadway portion of the project.

20 5. Funding for this project is being provided by the American Recovery and
21 Reinvestment Act of 2009 ("ARRA").

22 6. Pursuant to the Commission's revised Procedural Order, ADOT provided all
23 interested parties with notice of the Application and hearing thereon by both certified U.S.
24 mail and publication in the *Arizona Republic*, *Northwest Valley News*, a newspaper of general
25 circulation in the area of the four Railroad crossings.

26 7. The hearing was held as scheduled on May 23, 2011.

27 8. Mr. Robert Travis, a civil engineer and ADOT's Railroad Liaison, testified in support
28 of the Application. Mr. Travis testified that due to ADOT's road construction project which will

1 widen Grand Avenue, the above-described crossings will require the Railroad's automatic warning
2 devices to be modified. (Tr. 6: 18-25)

3 9. Mr. Travis further testified that ADOT's road widening project for U.S. 60 is
4 approximately 12 miles long between 99th Avenue and SR 303, and that the four crossings described
5 in this Application encompass approximately a four-mile length of the roadway. (Tr. 14: 1-9)

6 10. According to Mr. Travis, ADOT is spending between \$12 million and \$20 million for
7 the entire widening project and approximately \$2.1 million of the total amount will be spent on the
8 improvements being made at the four crossings described in this Application. (Tr. 19: 18-25)

9 11. Mr. Travis stated that after ADOT's initial Application had been submitted to the
10 Commission, the Railroad informed ADOT that it would like to upgrade the train detection
11 equipment and the traffic signals at the crossings to current state of the art standards. (Tr. 7: 21-15).

12 12. As a result of ADOT's discussions with the Railroad, Mr. Travis stated that ADOT's
13 widening project at the four crossings discussed herein will also incorporate the latest pre-emption
14 circuitry in conjunction with the constant warning circuitry to further reduce traffic delays. (Tr. 10: 1-15)

15 **103rd AVENUE**

16 13. Mr. Travis testified that at 103rd Avenue, the present automatic train detection warning
17 devices will be updated with constant warning time circuitry. He also testified that new cantilevers
18 with LED flashing lights will be installed covering all traffic lanes, replacing the automatic gates and
19 flashing lights that only cover the lanes closest to the edge of the road. (Tr. 8: 7-13)

20 14. Additionally, Mr. Travis testified that ADOT has identified the 103rd Avenue crossing
21 as a potential grade separated crossing, but it is unknown when ADOT will have the funding
22 available to schedule construction of such a crossing. (Tr. 8: 14-20)

23 15. According to the Staff Report, the planned improvements at 103rd Avenue will cost an
24 estimated \$286,436, and they are consistent with safety measures employed at similar at-grade
25 crossings in Arizona. The existing traffic signal pre-emption timing unit will be replaced with a
26 current model.

27 16. The Staff Report indicates that 13 freight trains per day pass through the 103rd
28 Avenue crossing at a speed of approximately 25 miles per hour.

1 17. Staff did not raise any concerns with respect to any safety problems caused by
2 the location of any hospitals, emergency vehicle traffic or school bus traffic at the 103rd
3 Avenue at-grade crossing.

4 107th AVENUE

5 18. Mr. Travis stated that at 107th Avenue, ADOT will be replacing all automatic warning
6 devices with new automatic warning devices which include installing a new cantilever for southbound
7 traffic covering each lane with LED flashing lights and new gates and bells. The crossing will be
8 further updated with new constant warning time circuitry. (Tr. 8-9: 21-2)

9 19. The Staff Report states that the proposed upgrades for the 107th Avenue at-grade
10 crossing are consistent with safety measures that are employed throughout the state at similar
11 crossings. Additionally, the Staff Report states that the improvements to be made at 107th Avenue are
12 estimated to cost \$319,005.

13 20. On average, 13 freights trains per day travel through the 107th Avenue at-grade
14 crossing at a speed of approximately 25 miles per hour.

15 21. The Staff Report did not raise any concerns with respect to hospital traffic, emergency
16 traffic or school bus traffic at the 107th Avenue crossing.

17 111th AVENUE

18 22. Mr. Travis stated that at the Railroad's 111th Avenue crossing, all existing automatic
19 warning devices will be replaced with new equipment consisting of automatic gates with bells, LED
20 lights, and constant warning time circuitry. (Tr. 9: 3-9)

21 23. Approximately 13 freight trains per day cross the roadway at this crossing at an
22 average speed of 25 miles per hour.

23 24. According to the Staff Report, the estimated cost of the improvements to be made at
24 the 111th Avenue crossing of the Railroad is approximately \$338,523, and with the new
25 improvements, this crossing's safety measures will be consistent with similar at-grade crossings
26 which are located in Arizona.

27 25. The Staff Report did not raise any concerns with respect to hospital traffic, emergency
28 traffic or school bus traffic at the 111th Avenue crossing.

GREENWAY ROAD

26. Mr. Travis testified that as part of ADOT's road widening project at the Greenway Road at-grade crossing and pursuant to discussions with the Railroad, ADOT is moving the crossing approximately five feet to the northwest for an improved roadway alignment. (Tr. 9: 10-13)

27. Mr. Travis stated that ADOT's contractor will be installing medians which will enable the Railroad to install state of the art median and road edge based automatic gates with LED lights and bells. He explained that this will eliminate the need for the existing cantilevers, which will be removed. Additionally, Mr. Travis testified that constant warning time circuitry would also be installed, lessening delays for vehicular traffic at the crossing. (Tr. 9: 12-24)

28. According to the Staff Report, approximately 15 freight trains per day cross the Greenway Road crossing due to some switching movements in the vicinity of this crossing.

29. The Staff Report indicates that the estimated cost of the improvements to be made at the Greenway Road, is \$413,782 and the safety measures utilized at the crossing will be consistent with similar at-grade crossings in Arizona.

30. The Staff Report did not raise any concerns with respect to hospital traffic, emergency traffic or school bus traffic at the Greenway Road crossing.

31. Based on the proposed upgrades to the four at-grade crossings described herein, Mr. Travis believes that public safety will be improved when the improvements are installed. (Tr. 21: 6-10)

STAFF RECOMMENDATION

32. Mr. Chris Watson, Staff's Grade Crossing Inspector and Assistant Supervisor for the Commission's Railroad Safety Section, testified that he adopted the Staff Report as his testimony in the proceeding and that Staff is recommending approval of the Railroad's Application. (Tr. 27: 1-8)

33. Mr. Watson further testified that it is his opinion the improvements as described in the Application and as recommended for approval by Staff will improve public safety. (Tr. 28: 11-14)

34. Mr. Watson stated that Staff finds ADOT's proposed improvements as set forth in the Application are state of the art industry standards and will improve the public welfare. (Tr. 30: 9-15)

35. Mr. Watson stated that, based on the Federal Highway Administration ("FHWA") guidelines described in the *FHWA Railroad-Highway Grade Crossing Handbook*, none of the four

1 crossings involved in the Application presently meet any of the guidelines set forth by the FHWA
2 for the construction of a grade separated crossing and none of them are projected to do so by the
3 year 2030. (Tr. 30: 16-20 and Ex. S-1)

4 36. Staff's recommendations are reasonable and appropriate and ADOT's Application to
5 upgrade the at-grade crossings at 103rd, 107th and 111th Avenues and Greenway Road should be
6 approved.

7 **CONCLUSIONS OF LAW**

8 1. The Commission has jurisdiction over the parties and over the subject matter of the
9 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
10 40-337.01.

11 2. Notice of the Application was provided in accordance with the law.

12 3. The installation of the crossing upgrades is necessary for the public's convenience and
13 safety.

14 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
15 recommended by Staff.

16 5. After installation of the crossings, the Railroad should maintain the crossings in
17 accordance with A.A.C. R14-5-104.

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ORDER

IT IS THEREFORE ORDERED the Arizona Department of Transportation's Application, as described herein, is hereby approved.

IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway shall complete the crossing upgrades as described in the Application within 15 months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway shall notify the Commission, in writing, within 10 days of both the commencement and the completion of the crossing upgrades, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the respective crossing upgrades, that the Burlington Northern Santa Fe Railway shall maintain the crossings in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: BURLINGTON NORTHERN SANTA FE RAILWAY

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